

1
2 MARK E. VOVOS, #4474
3 2721 S Pittsburg
4 Spokane, WA 99203
5 (509) 326-5220
6 *Attorney for Charles Harrison Barbee*

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,)
10) NO. 2:96-CR-00258-WFN-1
11 Plaintiff,)
12 v.) MOTION FOR COMPASSIONATE
13) RELEASE UNDER 18 U.S.C.
14 CHARLES HARRISON BARBEE,) § 3582(c)(1)(A) AND TO
15) EXPEDITE
16 Defendant.)
17)

18 **INTRODUCTION**

19 COMES NOW the Defendant, Charles Barbee, through his counsel, Mark E.
20 Vovos, and respectfully requests this most Honorable Court to consider his Motion
21 for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A). Mr. Barbee's
22 appellate case (No. 21-30043), for issues pertaining to his January 25, 2021 re-
23 sentencing before this Court, is no longer pending in the Court of Appeals. The
24 Ninth Circuit Court of Appeals has ruled on Mr. Barbee's appeal and this Court
25 now has jurisdiction. Mr. Barbee asks the Court to rule on this Motion at the time

1 of his resentencing for the above-mentioned appellate ruling. This will allow for
2 oral argument by his counsel for any issues not raised from this Motion.

3 As the Court is aware and attachments will show, Mr. Barbee filed his first
4 Compassionate Release Motion and it was denied. Subsequent to this filing,
5 Mr. Barbee filed a second 18 U.S.C. § 3582(c)(1)(A) on May 2, 2022. This second
6 motion was also denied. Mr. Barbee has since served additional time and now has
7 the required 30 years served on his sentence, as well as being 70 years of age. (*See*
8 Exhibit F, attached hereto).
9

10
11 Mr. Barbee previously sought an Indicative Ruling pursuant to Federal Rule
12 of Criminal Procedure 37 for Compassionate Release under 18 U.S.C.
13 § 3582(c)(1)(A)(i). This subsection required demonstration that, “extraordinary
14 and compelling reasons warrant such a reduction.”
15

16 The Court found that the defendant did not meet the requirements at that
17 time. In this Order, the Court also stated, “Though the Court does not feel the
18 Defendant meets the requirements for compassionate release now, if his health
19 changes for the worst in the future, or when he meets the requirements laid out in
20 18 U.S.C. § 3582(c)(1)(A)(ii), the Court invites him to seek compassionate
21 release.”
22
23
24
25

1 Mr. Barbee turned 70 years of age on March 2, 2022, qualifying him for
2 consideration for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(ii), and
3 thus places this Motion before the Court. The Court is fully aware of Mr. Barbee's
4 rehabilitative efforts as detailed in **ECF No. 466** and **ECF No. 471**, filed July 20,
5 2021 and September 28, 2021 respectively. He requests consideration in this
6 Motion of these filings, as to his rehabilitative efforts.

7 **ARGUMENT**

8
9 Under USSG 1B1, CMTN.1(B) in determining a projected release date of an
10 inmate, Courts may take into account any Good Time Credits. In compliance with
11 the changes Congress made in the First Step Act, the Justice Department's Bureau
12 of Prisons, published a "Final Rule" pertaining to Good Time Credits on
13 February 2, 2022 (*see* 28 CFR Part 523 – Exhibit D attached hereto).
14
15

16 There are many rulings supporting the application of Good Time Credits
17 awarded under 18 U.S.C. § 3624(B)(1) (*see United States v. Burrill*, No. 17-CR-
18 00491-RS, 445 F.Supp.3d 22, 2020 U.S. Dist. LEXIS 65774; *also United States v.*
19 *Heffington*, 476 F.Supp.3d 1042 Granted August 3, 2020; *also United States v.*
20 *Saenz*, Dist. LEXIS 122905 July 9, 2020). Relevant in all of these cases "Good
21 Time Credits" were used in the determination and granting of Compassionate
22 Release.
23
24
25

1 With the inclusion of Good Time Credits, Mr. Barbee will have reached the
2 30-year requirement of 18 U.S.C. § 3582(c)(1)(A)(ii) on or about November 30,
3 2022. On this date he will have served 26 years and 52 days for a total of 9548
4 days (including six leap year days) and earned 1408 days of Good Time, for a total
5 of **10,956** days. This will satisfy the 30 years (30 years x 365 = 10,950 days + 6
6 leap year days for a total of **10,956** days) required in the statute 18 U.S.C.
7 § 3582(c)(1)(a)(ii). Mr. Barbee asks this Court to review the information above and
8 make a ruling for Compassionate Release on or about November 30, 2022. This
9 will afford the Bureau of Prisons adequate time to schedule and execute the
10 necessary procedures to affect Mr. Barbee's return to society. (See Exhibit C
11 attached hereto.)
12

13
14 The Bureau of Prisons has recently diagnosed Mr. Barbee with
15 hypothyroidism and possible nerve damage caused by deterioration in the area of
16 the 8th and 9th vertebrae, which is in the neck area. He has numbness in his left arm
17 and hand due to this pinched nerve condition. The Bureau of Prison staff explained
18 to Mr. Barbee that this is common in older persons. He is currently waiting for
19 medical trips to be scheduled so specialists can determine a treatment plan for
20 these conditions. He is still having issues with high blood pressure and medical has
21 changed his prescriptions from Lisinopril to Amlodipine 10 mg, and again to
22
23
24
25

1 Hydrochlorothiazide 12.5 mg. He is taking Atorvastatin 10 mg. for high
2 cholesterol, and Levothyroxine for his hypothyroid issue. (See Exhibit E attached
3 hereto.)

4 CONCLUSION

5
6 Mr. Barbee requests that this Court consider the following:

- 7 • He is a first time offender.
- 8 • This Honorable Court has already acknowledged his rehabilitative
9 efforts as detailed in **ECF No. 466** and **ECF No. 471**, filed July 20,
10 2021 and September 28, 2021, respectively.
- 11 • Mr. Barbee continues to seek self-improvement. He is attending
12 **THRESHOLD**, a **First Step Act** program, through Religious
13 Services at FCI Talladega. This is a six-month program supervised by
14 the Chaplain over Religious Services, with the assistance of the
15 Kairos organization.
- 16 • Mr. Barbee will have served 30 years of his sentence, counting his
17 Good Time, on November 30, 2022, and has accrued over 23 years of
18 clear conduct in the Bureau of Prisons.
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- 1 • He has paid on the restitution ordered by this Court and should be able
2 to significantly improve on these payments, if released and earning
3 better wages. (*See Exhibit B attached hereto.*)
- 4 • He is Social Security and Medicare eligible.
- 5 • He was employed by AT&T for 21 years and 10 months. He retired
6 with good evaluations from AT&T, which also approved him for
7 rehire should he desire to return.
- 8 • He has recently been experiencing several medical issues that are
9 currently being assessed by the Bureau of Prisons. He is being
10 scheduled for outside medical trips to determine treatment options for
11 hypothyroidism, a pinched nerve issue in his left shoulder, arm and
12 hand. (*See Exhibit E attached hereto.*)
- 13 • Mr. Barbee is sincerely repentant of his actions. He is willing and able
14 to be a productive member of society, given the opportunity.
- 15 • Mr. Barbee has a release plan. He will reside with his eldest daughter,
16 Milica Lattanzie, at 5017 West 12th Street Drive, Greeley, Colorado
17 80634. This home has already been approved by personnel from the
18 Parole Office. (*See Exhibit A attached hereto.*)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Joseph Harrington, Assistant United States Attorney.

s/ Mark E. Vovos, #4474

Attorney for Charles Harrison Barbee

2721 S. Pittsburg

Spokane, WA 99203

Phone: (509) 326-5220

E-mail: mvovos@mvovos.digitalspacemail8.net